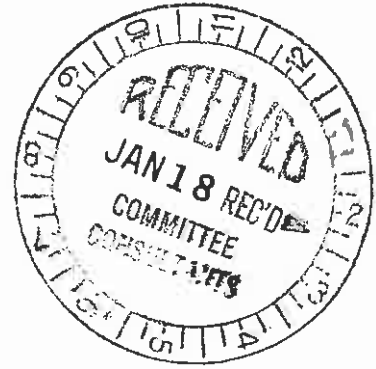


City of San Diego
Office of the City Clerk
MEMORANDUM

533-4000



DATE: January 14, 2011

TO: Committee Consultant of Public Safety and Neighborhood Services
Committee and to Ed Ketcham, Council Committee Consultant Assistant

FROM: City Clerk

SUBJECT: Hearing to be Set Before Above Committee

The City Clerk's Office has received an appeal from Luce Forward, Attorneys at Law, 600 West Broadway, Suite 2600, San Diego, CA 92101, pursuant to San Diego Municipal Code Section 33.0505 relative to Alcohol Beverage License Permit Denial Hearing, for the existing Walgreens store at 3222 University Avenue in North Park.

A copy of the appeal is attached hereto.

ELIZABETH MALAND
City Clerk

A handwritten signature in cursive script that reads "Linda Irvin".

By
Deputy City Clerk
Linda Irvin

Attachment

cc: Sergeant, Andra E. Brown, Vice Operation, SDPD, MS 710
Ed Ketcham, (533-3984) Assistant for Council Committees, MS: 3A
City Clerk file



Store No. 6656

APPEAL TO COUNCIL COMMITTEE

RECEIVED
CITY CLERK'S OFFICE
11 JAN 14 PM 4:04

SAN DIEGO, CALIF.

The Undersigned Walgreen Co.

(Print or type name of appellant)

does hereby appeal the decision of _____

Administrative Hearing Officer Katherine Jane Morris

pursuant to San Diego Municipal Code Section 33.0505

concerning Denial of a public convenience or public necessity finding for issuance of a Type 20
(state Case/Permit No. or nature of request)

(off-sale beer and wine) license for an existing Walgreens store at 3222 University Avenue.

This appeal is based on the following specific points:

See attached.

(attach additional sheets if necessary)

Luce Forward, Attn: Jennifer Chavez, Esq.

(Print or type name)

600 W. Broadway, Suite 2600

(Address)

San Diego, CA 92101

619-236-1414

(Telephone)

(If filing as an agent, please
include name and address of
client below)

Walgreen Co., Attn: Michael Redstone, Esq.

(Print or type name)

104 Wilmot Road, Second Floor, MS#1420

(Address)

Deerfield, IL 60015

I certify under penalty of perjury
that the foregoing, including all
names and addresses, is true and
correct.

Jennifer Chavez
(Signature of Appellant)

1/14/10
(Date)

BRIAN C. FISH, PARTNER
DIRECT DIAL NUMBER 619.699.2424
DIRECT FAX NUMBER 619.645.5395
EMAIL ADDRESS bfish@luce.com

January 14, 2011

38415-06656

VIA MESSENGER

Councilmember Marti Emerald, Chair
Council Committee on Public Safety and Neighborhood Services
City Administration Building
202 C Street, MS #10A
San Diego, CA 92101

Re: **Walgreens/Appeal of Hearing Officer Decision to Deny PCN Finding for Beer and Wine Sales at 3222 University Avenue**

Dear Councilmember Emerald:

Walgreens, the nation's largest drug store chain, is requesting that the Committee on Public Safety and Neighborhood Services accept this appeal and overturn the Hearing Officer's decision to deny a finding of public convenience or necessity ("PCN") for issuance of a Type 20 ABC License (off-sale beer and wine sales) to the Walgreens store located at 3222 University Avenue. The store is located along a busy commercial corridor at the southeast corner of 32nd St. and University in North Park. The site is the perfect location for a modern drug store operation and Walgreens proposes to dedicate a tiny percentage of its existing store to the sale of beer and wine as an additional convenience item for existing and potential customers.

A. ACCEPTANCE OF THE APPEAL

Consistent with San Diego Municipal Code section 33.0505, the Committee on Public Safety and Neighborhood Services ("Committee") should accept this appeal for the reasons described below and in the attached materials:

1. Walgreens was denied the opportunity to make a full and complete presentation to the Hearing Officer. Prior to the Hearing Officer hearing, Walgreens representatives asked the Police Department to provide them with any materials the Police Department relied on in denying the PCN. The Police Department provided limited crime statistics and maps consisting of only seven pages. At the start of the Hearing Officer hearing, the Police Department delivered a half-inch stack of materials to the Hearing Office and Walgreens, including more extensive crime statistics, photographs, draft PCN findings and correspondence. As Walgreens was not

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Chair, Council Committee on Public Safety and Neighborhood Services
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afforded time to review those materials and make a full and complete presentation to the Hearing Officer regarding the same, the Committee should accept the appeal.

2. New evidence is now available that was not available at the time of the Hearing Officer's hearing. Within the next few weeks, Walgreens intends to submit additional evidence that further demonstrates that the sale of beer and wine will serve a public convenience notwithstanding the fact that other retailers in the area also sell alcohol.

3. The Hearing Officer's decision was arbitrary and not supported by the applicable evidence. As described in more detail in Section C of this letter, the Hearing Officer failed to perform the analysis required by state law and the evidence does not support the decision to uphold the Police Department's denial of the PCN.

4. The appeal presents a City-wide issue on which guidance of the Committee is required and the matter is of City-wide significance. It is our understanding and belief that the Police Department routinely and consistently denies PCN requests for new alcohol licenses in census tracts where the number of existing licenses are in excess of the PCN threshold (one off-sale license for every 1,250 inhabitants within the census tract) and the crime rate is 20% above the Citywide average. For all the reasons described in Section B of this letter, such a blanket policy is inconsistent with State law and contrary to the interests of the City as a whole.

B. POLICY JUSTIFICATIONS FOR GRANTING THE APPEAL AND MAKING THE PCN DETERMINATION

The Police Department is implementing a de facto moratorium on new off-sale alcohol licenses throughout the City in areas designated as "high" crime. No justification exists for such a blanket approach to PCN reviews. State law requires the City to perform a project specific analysis to determine whether the public convenience or necessity would be served by issuance of the requested license. The City Council adopted its policy for the Police Department's review of PCN determinations (Resolution No. R-294124) on November 14, 2000. Consistent with State law, that policy identifies some criteria the Police Department should weigh in making its PCN determination and specifically directs that "[e]ach application shall be judged on an individual basis and any one criteria or combination of criteria may be waived as the result of imposed criteria."

Unfortunately, over time, the Police Department's approach has evolved away from a full and balanced consideration of all relevant factors. As this appeal illustrates, the de facto moratorium denies quality operators like Walgreens the chance to provide the City with an additional quality "one-stop" shopping experience that the community wants and deserves. Therefore, Walgreens

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asks the Committee to make the requested PCN findings and thereby give policy direction to the Police Department to give the proper weight to criteria such as (i) the experience and character of the PCN applicant, and (ii) the quality of alcohol sales and security program proposed by the business.

In support of the above, the Committee should note that Walgreens is an experienced and trusted retailer of regulated products (pharmaceuticals, tobacco and alcohol) with decades of experience successfully selling such products as part of its overall retail operations. A store like Walgreens, which will dedicate only a tiny fraction of its floor area to beer and wine sales, will not serve as a source of problems for the community. Large operators like Walgreens have a reputation to uphold. Walgreens knows that people have many retail options and that a poorly run beer and wine program at any one of its stores will deter people from frequenting Walgreens stores elsewhere. As such, Walgreens' successful business model depends on its ability to implement best practices every where it operates.

In addition to the above, Walgreens has the resources to implement a host of security and safety measures. Those measures, which are designed to ensure that alcohol sales will be handled in a manner that will not adversely impact the surrounding community, include:

- Employees at each store undergoing training prior to beer and wine being made available for sale at the store;
- Each cash register clerk submitting a policy acknowledgement as part of the daily log-in and log-out process;
- Each cash register clerk being required to request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register "prompts" will remind the clerks to request this proof;
- Requiring any under-aged employees to involve the manager or assistant manager for the sale of beer or wine;
- Installing cameras and public view monitors in all Walgreens stores to deter criminal activity and promote security. The digital images captured from these devices are stored for a period of time on a Digital Video Recorder;
- Positioning beer and wine displays on the opposite side of the store from where the entrance is located;

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- Not catering to those likely to abuse alcohol by not selling beer by the individual can or bottle. Walgreens will only sell beer in 6 packs, 12 packs, 18 packs and cases.

Other reasons to support Walgreens requested PCN are outlined below and in the attached materials. Once all the relevant factors are given their proper weight, one can see that Walgreens is exactly the type of company the City wants selling alcohol regardless of the conditions in the surrounding community. In contrast, the moratorium approach taken by the Police Department and the Hearing Officer inappropriately rewards existing alcohol retailers (some of whom may not be as conscientious as Walgreens) by eliminating potential competition from businesses like Walgreens that offer the community safe, clean and a full service retail experience. To give competition a chance to work, and thereby potentially improve conditions and alcohol sales programs in areas with higher crime, the de fact moratorium policy of the Police Department needs to change. The granting of the PCN to Walgreens would be a very good first step toward making that policy change a reality.

C. EVIDENTIARY JUSTIFICATION FOR GRANTING THE APPEAL AND MAKING THE PCN DETERMINATION

The denial of Walgreens' PCN request for 3222 University Avenue was premised primarily on the arbitrary and unsubstantiated findings described below. Those findings were framed in terms of 10 Guidelines For Determining Public Convenience or Necessity (each a "Guideline") used by the Police Department. The following responds on a Guideline by Guideline basis to illustrate why the Committee should grant the PCN request.

1. *Whether the issuance involves an existing business with a license which is being transferred to a new location, and which will not result in an increase in the total number of off-sale retail liquor licenses or on-sale retail liquor licenses in the census tract in which the business would be located.* It is not clear that this Guideline even applies as Walgreens is not proposing to transfer an existing license to a new location. Nonetheless, the Hearing Officer reached an arbitrary and unsubstantiated conclusion when it denied the PCN because a new license would "impact the number of ABC licenses in the area and will contribute to the over concentration of ABC licenses already existing."

Although the threshold for requiring a PCN determination was triggered in Walgreens' census tract (16), and the request will increase the total number of alcohol licenses, the evidence demonstrates that a true overconcentration of ABC Licenses does not exist in the vicinity of Walgreens. The PCN thresholds are based solely on the number of residents within an individual

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census tract (1 ABC license for every 1,250 residents).¹ Census Tract 16 includes relatively few residents. In contrast, the census tract includes two prime commercial arterials, University Avenue and El Cajon Boulevard and is also bisected by I-805, that draws people from an area much larger than just the census tract. In an area such as this one, analysis based on the number of residents within an individual census tract is simply not useful for purposes of determining whether too many alcohol establishments exist or whether a new license will pose problems.

An individual census tract based analysis is also flawed because it assumes that alcohol retailers and household populations will be spread evenly throughout a city. In fact, the City's land use regulations do not permit such a distribution. To the contrary, the City's zoning requirements dictate that alcohol outlets be concentrated in the City's commercial zones and prohibits them in most residential zones. As such, when making a PCN finding, one must consider the broader context. In this case, that means analyzing census tract 16 along with the census tracts surrounding it (12, 13, 15, 17, 22.01 and 24.01) that Walgreens will serve. As evidenced by the census tract information attached hereto, 28 ABC off sale licenses could be issued within this aggregated area without triggering a PCN threshold and only 23 ABC off sale licenses currently exist. In other words, there is no "overconcentration" in the greater North Park area that Walgreens will serve.

2. ***Whether the business, by reason of its location, character, manner or method of operation, merchandise, or potential clientele, will serve a segment of the City's business or residents not presently being served.*** Walgreens, by reason of its location, character, manner and method of operation, merchandise and clientele would serve a segment of the City's residents not presently being served. Ironically, for purpose of this Guideline, the Hearing Officer considered businesses outside Walgreens census tract in making its determination. Setting aside that inconsistency with the approach taken in evaluating whether an overconcentration exists, the Hearing Officer wrongly denied the PCN based on a finding that there are other businesses already licensed to sell alcohol in census tract 16 and others surrounding it.

In reality, the retailers considered by the Hearing Officer are not all that close by and not "the same as or similar to" Walgreens. Those retailers include grocery stores (Fresh & Easy, North Park Market) and gas stations (Apro, Venture Petroleum, Union 76). None of those other

¹ It should also be noted that PCN findings are required based on outdated 2000 census data. According to U.S. census data, the City of San Diego's population increased from 1,223,400 in 2000 to 1,306,300 in 2009. This population increase of 82,900 increases the threshold for PCN determinations by an additional 66 licenses within the City as a whole.

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businesses offer residents a retail experience even remotely similar to the “one stop” shopping Walgreens can offer if it is allowed to sell beer and wine. Further, while a nearby CVS exists, the businesses do not truly serve the same clientele. The fact that Walgreens chose just a few years ago to build a brand new store across the street from CVS, a business strategy that Walgreens regularly employs, demonstrates that each company serves a different clientele and each offers a unique operation, character and merchandise not offered by the other. For example, CVS stocks a large selection of distilled spirits and it sells single cans of beer; Walgreens will not carry any spirits or singles of beer as its inventory will focus solely on the casual beer and wine drinker. In short, Walgreens customers would not find it convenient to travel to a grocery store, gas station or even CVS to make the purchases they make at Walgreens. Therefore, the facts do not support a finding that residents are already being adequately served by the businesses that exist in the area.

3. *Whether the business will be located within a 600-foot radius of incompatible facilities, such as public and private schools, day care centers, churches, parks, homeless shelters, and alcohol rehabilitation centers, and facilities designed and operated to serve minors.* The Hearing Officer wrongly concluded that Walgreens’ application stated that the store was “within 600-feet of incompatible facilities including schools, day care centers, parks homeless shelters, alcohol rehabilitation centers, and facilities designed and operated to serve minors.” In fact, the only information provided in Walgreens’ PCN application is the store’s address, census district, crime rate and information regarding existing ABC licenses (See attached PCN Application].) Based on research conducted by Walgreens and its consultants, Walgreens is unaware of the existence of any public or private school, day care center, park, homeless shelter, alcohol rehabilitation center or facilities that serve minors within 600-feet of the store. There are, however, three churches located 500 to 600-feet away from Walgreens. By car or by foot, door to door, the distance from Walgreens to the Abundant Grace Christian Center at 3117 University Avenue is approximately 515 feet. The door-to-door distance to the North Park Hispanic Church and the Ruamajai International Church, both at 3810 Bancroft Street, is about 600-feet. These churches are not “incompatible” with Walgreens’ proposed beer and wine sales. Walgreens is a neighborhood serving drugstore and frequently finds itself located near land uses such as churches, schools and residences. More importantly and as discussed above, Walgreens has a number of safety and security procedures in place to ensure that its alcohol sales are handled in a safe and responsible manner that will not have an adverse impact on the surrounding community, including nearby churches.

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4. *Whether the location of the license will be in a crime data area covered by police department statistics, which has a twenty percent greater number of reported crimes than the average number of reported crimes for all crime data areas in the City.* The Hearing Officer concluded Walgreens is not in conformance with this Guideline because it is within a census tract with a crime rate of 256.6%. However, very few of these crimes and arrests can be attributed to Walgreens. There were only 5 reported crimes against Walgreens during the year reviewed by the Police Department. The Memorandum dated 7/30/2010 prepared by the Police Department reveals that in 2009 there were only 2 arrests at 3222 University Avenue as compared to 137 arrests within a 0.2-mile radius from the store. Similarly, there were 8 crime cases at 3222 University Avenue as compared to 219 crime cases within a 0.2-mile radius. In other words, Walgreens was the site of only 1.5% of all arrests and 3.7% of all crime cases within a 0.2-mile radius. In the census tract generally, even the Police Department conceded that many of the crimes cases and arrests may be occurring along El Cajon Boulevard, an area four blocks to the north that is notorious for criminal activity.

Calls for service are not a factor identified in the Guidelines. Nonetheless, the Police Department submitted information from 2009 indicating that it supposedly responded to 32 calls for service to the store. When one looks behind the numbers, a different story emerges. First, as Walgreens is a “landmark” at a busy intersection, a number of calls likely have nothing to do with Walgreens-related operations, customers, etc. Second, several of these calls for service, are likely associated with patrons leaving the numerous bars in the area. Walgreens may also have initiated some of these calls to request assistance with disruptive transients loitering in the area. Due in large part to efforts Walgreens initiated with the local business community and City Hall, the store manager reports that Walgreens’ transient-related issues are much improved, though the area generally still has a large transient population.

When reviewing the record, the Committee should recognize that Walgreens’ alcohol sales are unlikely to exacerbate the issues the Police Department has with the homeless. Walgreens will not sell beer to intoxicated persons and it will not sell beer in single cans or bottles. Beer will be sold in 6-pack quantities or larger and the stores video monitors discourage shoplifters. As the Walgreens crime statistics illustrate, Walgreens works very hard, and with good success, to provide safe retail opportunities for the community. The store managers have proactively worked with the Police Department and City to address transient and other community issues in the Midway area. Even Sgt. Griffin noted during the Administrative Hearing that Walgreens should be commended for its exemplary operations and for being a good partner with the Police Department and the community in general.

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5. ***Whether the issuance of the license involves an existing business, which has been located at a site which has had three or more reported crimes as defined in (4) above within the previous one-year period.*** The Hearing Officer found Walgreens in conflict with this Guideline because there were 5 reported crimes (4 robbery/1 petty theft) against the business in 2009 and because there were 32 calls for service with at least 5 of those calls specifically referring to a drunk in public or a loitering transient. Walgreens should be commended for having only five reported crimes against it in the entire 2009 calendar year. The store is 13,650 square feet in size and hundreds of thousands of customers go through its doors each year. For a retailer in this class, 5 crimes in a given year should be well within the range of "acceptable." The City's threshold of considering only 4 crimes per year to be acceptable may be appropriate for a small convenience store, but not for a large retailer like Walgreens. The 32 calls for service are addressed in Paragraph #4 above. That some of these 32 calls for service concerned intoxicated persons or loitering transients has little to do with Walgreens' operations or its proposed alcohol sales. Walgreens has worked closely with the local business community and Councilman Gloria's office to address transient issues. The store manager reports that much progress has been made over the last few months. It is also important to note that, as mentioned above, Walgreens will not sell single cans or bottles of beer that might be attractive to transients or others drinking in public places. Walgreens will only sell beer in 6-pack quantities or larger pursuant to policies and procedures that ensure sales will not have an adverse impact on the community or police resources.

6. ***Whether the issuance of the license will promote the goals and policies of the City's General Plan, any applicable specific plan, or any similar policies that have been adopted by the City Council.*** The Hearing Officer correctly concluded that the sale of alcohol to law abiding residents/visitors promotes goals of the City. Beer and wine sales at the property is permitted by all applicable land use plans and policies. The Hearing Officer went on to note that issuance of a license to Walgreens would "add to the already over-concentration of licenses in this area." As noted above, however, the area is a busy commercial corridor with a large residential population in adjacent census tracts that can support an additional alcohol retailer like Walgreens. Indeed, those shopping in the area would find it convenient and would also benefit from the competitive environment that would result if Walgreens were permitted to sell beer and wine. Accordingly, Walgreens' application conforms with this Guideline.

7. ***Whether the application is for a premises where a previous license has been revoked within the previous one-year period.*** This Guideline is inapplicable as no license has been revoked from the premises within the past year. Walgreens is applying for a new license and as discussed above, Walgreens has an exemplary record when it comes to the sale of regulated products.

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8. *Whether the applicant has been convicted of a felony.* Walgreens has not been convicted of a felony. As discussed above, Walgreens has an excellent record in all of its business dealings and has proven to be positive contributor to the community.

9. *Whether the premises are located within 100 feet of residentially zoned property.* The Walgreens building is located within 100-feet of residences located to the north, but the store's entrance is more than 200-feet away from the nearest residence. One residence is adjacent to the backside of the store, but a fence and dense landscaping provide a substantial buffer. Walgreens is a neighborhood serving drugstore and frequently finds itself located near land uses such as churches, schools and residences. As discussed above, Walgreens' has implemented a number of proven safety and security procedures to ensure that these nearby residents will not suffer adverse impacts as a result of Walgreens alcohol sales.

10. *Whether any other information supplied by the applicant, or other competent evidence shows that the "public convenience or necessity" will be served by issuance of the license.* The Hearing Officer failed to provide fair consideration of the detailed information provided by Walgreens through testimony at the Administrative Hearing and the letter dated October 28, 2010 (a copy of which is attached hereto). That testimony and correspondence, as well as this appeal, demonstrate that public convenience or necessity would be served by permitting Walgreens to sell beer in wine. Instead of considering that evidence, the Hearing Officer found public convenience or necessity would not be served by issuance of an ABC License to Walgreens based on the objection of other police officers, citing "over concentration" and "high crime." As discussed above, it was inappropriate to deny the application on those grounds. Additionally, the Hearing Officer considered the higher than average time per service call as well as narcotics and sex crimes that are problematic in the census tract. This finding is also unsubstantiated because, as discussed above, Walgreens does not contribute any of these police problems and it does not tax an undue share of existing police resources. More importantly, Walgreens has proven policies and procedures in place to ensure that alcohol sales will be carried out in a manner that does not adversely impact police resources.

D. CONCLUSION

For all of the reasons discussed above and in the attached letter, the Public Safety and Neighborhood Services Committee should accept Walgreens' appeal and reverse the Hearing Officer decision to deny the PCN finding. The foregoing demonstrates that Walgreens' sale of beer and wine will serve the public convenience or necessity by providing customers with the convenience of "one stop shopping" and also create a more competitive retail environment. Walgreens has also demonstrated that beer and wine sales will be handled in a safe and responsible manner that will not have an adverse impact on police resources or the surrounding

LUCE FORWARD

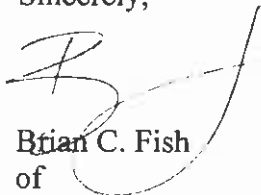
ATTORNEYS AT LAW • FOUNDED 1873

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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community in general. Providing this additional product offering will help Walgreens thrive during tough economic times, which in turn will foster continued stability in the North Park neighborhood it currently serves. As such, we respectfully request that the Safety and Neighborhood Services Committee make the requested PCN finding.

Sincerely,



Brian C. Fish
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

BCF/
Enclosures

cc: Michael Redstone, Esq.
Mr. Dale Malee

JENNIFER LA FOND CHAVEZ, ASSOCIATE
DIRECT DIAL AND FAX NUMBER 619.699.2537
EMAIL ADDRESS jchavez@luce.com

October 28, 2010

38415-6656

VIA E-MAIL AND U.S. MAIL

Administrative Hearings
Citizens Review Board on Police Practices
202 C Street, MS 9A
San Diego, CA 92101
Attn: Ms. Denise Sandoval

**Re: Ref No. 1914141113/Appeal of Police Department Decision to Deny Finding of
Public Convenience or Necessity for Walgreens at 3222 University Avenue**

Dear Ms. Sandoval:

Pursuant to San Diego Municipal Code section 33.0501, this letter serves as Walgreens' appeal of the San Diego Police Department determination, dated October 18, 2010 and received by us on October 20, 2010, that a finding of public convenience or necessity ("PCN") cannot be made for the issuance of an ABC Type 20 License for the existing Walgreens store at 3222 University Avenue in San Diego (a copy of which is enclosed for your reference). Walgreens, the nation's largest drug store chain, has decades of experience as a responsible seller of regulated products such as pharmaceuticals, tobacco and alcohol. As the following explains, that experience will be brought to bear if the City approves Walgreens' proposal to dedicate a small percentage of its existing store in North Park to the sale of beer and wine for the casual drinker. For those and the other reasons described below, Walgreens respectfully requests that a hearing officer find that issuance of a Type 20 license to Walgreens would serve the public convenience or necessity.

Public Convenience or Necessity Would be Served By Issuance of A Type 20 License to Walgreens

State law establishes PCN thresholds, after which, the consent of the relevant local agency is required before the ABC may issue additional off sale licenses within a census tract. That law regarding PCNs does not require a denial of an alcohol license when the threshold is triggered, only an analysis of whether the specific application before the local agency is convenient or necessary. A PCN is required here because of the crime rate and the number of existing off-sale alcohol establishments within the applicable census tract. Walgreens is located in Census Tract 16. Based on 2000 population counts, the threshold for requiring a PCN in this census tract is 4 off-sale licenses and 4 licenses currently exist.

The public convenience or necessity would be served by permitting beer and wine sales for off-site consumption at the 3222 University Avenue Walgreens store. Walgreens is a national chain of retail drugstores selling prescription and over-the-counter medicines as well as a variety of general

Ms. Denise Sandoval
October 28, 2010
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merchandise, sundries and grocery items to the public. Walgreens will dedicate only a very small percentage of the 13,650 square foot store for beer and wine sales. As such, beer and wine sales are expected to account for only a small percentage of overall sales. Further, unlike some other nearby retailers, Walgreens is not requesting a license to sell liquor nor will it sell single bottles or cans of beer and malt liquor as its inventory will only target the casual consumer of beer and wine.

Of equal importance to this appeal, the impetus for the sale of beer and wine is demand from existing Walgreens customers. By adding beer and wine to the other retail items already offered in the store, Walgreens can better serve the surrounding community by providing its customers with the convenience of "one-stop" shopping. Walgreens will also offer the security and crime prevention measures, described in more detail below, not available at other stores in the area. As demonstrated by the attached ABC chart, Walgreens will be the only store with a limited beer and wine inventory that is offering all the above described security and convenience within Census Tract 16.

Beer And Wine Sales Will Not Aggravate Existing Police Problems or Otherwise Adversely Impact Police Resources

As noted above, a PCN is required because Walgreens is located within a census tract with a crime rate that is at least 20% greater than the Citywide average crime rate. Walgreens is an experienced and trusted retailer that has sold regulated products, including pharmaceutical and tobacco, in all types of neighborhoods (including others like North Park) and Walgreens will bring that experience to its proposed alcohol sales program. Along those lines, so as to ensure compatibility with surrounding neighborhoods, Walgreens has taken measures to assure that any alcoholic beverage will be sold in a highly responsible and conscientious manner. Detailed, corporate policies and procedures are already in place and will be strictly enforced. The policies and procedures may include requirements such as:

- Employees at each store must undergo training prior to beer and wine being made available for sale at the store;
- Each cash register clerk must submit a policy acknowledgement as part of the daily log-in and log-out process;
- Each cash register clerk must request identification and proof of age for any customer attempting to purchase beer or wine who appears to be under the age of 40. Pre-programmed cash register "prompts" will remind the clerks to request this proof;
- Any under-aged employees will be required to involve the manager or assistant manager for the sale of beer or wine.

Training will be accomplished in part through a Walgreens internal alcohol sales training program, which is required for all cashiers and managers. The training program focuses on recognizing and

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preventing sales of alcohol that may be detrimental to the public welfare (i.e., the sale of alcohol to minors and intoxicated persons). Implementation of this program will help ensure that the sale of alcohol at the store will not be detrimental to residents, shoppers, or other business in the vicinity of this store.

Walgreens also uses a variety of security strategies to ensure the safety of their employees and customers as well as the security of its merchandise. For example, cameras and public view monitors have been installed in all Walgreens stores to deter criminal activity and promote security. The digital images captured from these devices are stored for a period of time on a Digital Video Recorder and can be made available to the Police Department. Beer and wine displays will also be positioned on the opposite side of the store from where the entrance is located. To prevent abuses, Walgreens will also only sell beer in 6 packs, 12 packs, 18 packs and cases. Walgreens will not sell beer by the individual can or bottle. With all of these measures in place, the issuance of a beer and wine license to Walgreens will not have a material and adverse impact on police resources or the community in general.

Census Tract Based Statistics Are In Imprecise Way to Determine Whether a New Off-Sale License Should Be Issued

PCN Thresholds are Based on Outdated 2000 Census Data: A finding of public convenience or necessity ("PCN") is required for Walgreens because, based on 2000 census data, the census tract has more than one Type 20 or 21 license for every 1,250 inhabitants within it. There were 6,126 inhabitants living within Census Tract 16 in 2000, which means the PCN threshold for off-sale licenses is 4.9. Four licenses already exist. However, the City of San Diego's population increased from 1,223,400 in 2000 to 1,306,300 in 2009.¹ This population increase of 82,900 increases the threshold for PCN determinations by an additional 66 licenses within the City as a whole. If just 124 of those new inhabitants reside within census tract 16, then a fifth license could be issued to Walgreens without triggering the alcohol license threshold for a PCN.

PCN thresholds fail to consider local land use patterns: The census tract and household population based PCN threshold assumes that alcohol retailers and household populations will be spread evenly throughout a City. That analytical approach fails to consider an individual City's land use and zoning patterns. Census Tract 16, for example, is bisected by Interstate 805 and includes busy commercial corridors along University Avenue and El Cajon Avenue. As a result of these and other non-residential land uses within the census tract, the threshold for requiring a PCN is lower than it would be in a predominantly residential census tract of a similar size. Indeed, some census tracts surrounding Walgreens do not trigger the PCN threshold because they are predominantly residential and/or non-commercial. In fact, if one conducts the PCN analysis with respect to all the census

¹ U.S. Census Bureau

Ms. Denise Sandoval
October 28, 2010
Page 4

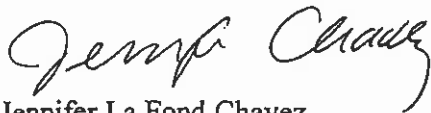
tracts that share a border with Census Tract 16,² the threshold for triggering a PCN would be 25 licenses and only 23 exist (not including surrendered licenses).

Walgreens will serve the residential population within all the above mentioned census tracts, as well as others living and working in the surrounding area and traveling along the nearby I-805. Further, the issuance of the ABC license to Walgreens is necessary in order for the community to benefit from competition between Walgreens and the CVS located across the street from Walgreens in Census Tract 15. Currently, Walgreens is at a competitive disadvantage because CVS already sells alcohol pursuant to an existing ABC license. If CVS has to compete on a level playing field with Walgreens, each of these national retailers will be encouraged to provide the type of safe and customer oriented environment that the surrounding community expects and deserves. If the PCN finding for Walgreens is withheld, the benefits of true competition are lost and it is the surrounding community that suffers in the end. Therefore, the City should find that issuance of an ABC license to Walgreens is appropriate and would serve the public convenience or necessity.

Conclusion

The foregoing demonstrates that public convenience and necessity would be served and even enhanced by the sale of beer and wine at this Walgreens store. Such sales would facilitate convenient, "one-stop" shopping for Walgreens' many customers in the City of San Diego. Sales at Walgreens will be conducted in a way that maximizes public safety, minimizes public nuisance and at a location that is very well suited for beer and wine sales. Additionally, the beer and wine sales will allow Walgreens to remain competitive with retailers in the vicinity such as CVS. This competition will not only benefit the community in general, it will help to maintain the up to 37 full time and part time jobs generated by Walgreens. For all of these reasons, the City should make a finding of public convenience or necessity for the proposed sale of beer and wine at Walgreens' 3222 University Avenue store.

Sincerely,



Jennifer La Fond Chavez

for

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

JLC/

Enclosures

cc: Brian Fish, Esq.
Michael Redstone, Esq.

² Census Tract 12, 13, 15, 17, 22 and 24.



THE CITY OF SAN DIEGO

LFH&S/JSL

OCT 20 2010

RECEIVED

October 18, 2010

IN REPLYING PLEASE
GIVE OUR REF.NO.
1914141113

Certified Mail #7008 0150 0002 4313 3171

Ms. Jennifer Chavez
600 W. Broadway, Ste. 2600
San Diego, CA 92101
Reference: PCN Application @ 3222 University Avenue, San Diego

THIS LETTER IS TIME SENSITIVE

Dear Ms. Chavez:

On July 20, 2010, you requested a Public Convenience or Necessity evaluation of the premises located at 3222 University Avenue, San Diego, California. Your request was to acquire a Type 20 (Off-Sale Beer and Wine) License for an existing Walgreens at that location. In accordance with the standard operations of Walgreens stores nationwide, the store offers a wide range of goods and food items and is seeking to include beer and wine in its inventory.

In accordance with Business and Professions Code, section 23958.4, your application is required to meet standards for public convenience and necessity. Your application, for the described premises, fails to meet those standards for one or more of the following reasons:

- X The premises falls within a crime data area which has a twenty percent greater number of reported crimes than the average number of crimes for all crime data areas in the City (High Crime area).
- X The issuance of a new license will result in an undue concentration of ABC licenses within the census tract.
- X The business will not serve businesses or residents not currently being served by a same or similar business.
- X This license will aggravate existing Police problems.

CITY OF SAN DIEGO POLICE DEPARTMENT
VICE OPERATIONS
1401 BROADWAY, SAN DIEGO, CA 92101-5720
PHONE: (619) 531-2452 FAX: (619) 531-2448





Page 2
October 18, 2010

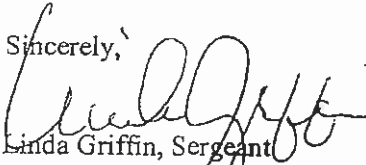
THE CITY OF SAN DIEGO

Should you choose to appeal this decision, you may request a hearing by writing to:

Citizen Review Board on Police Practices
202 C Street, MS 9A
San Diego, CA 92101

Your request must specifically articulate the basis for the appeal and identify the ways you feel your project may serve the public convenience and/or necessity.

Your request must be made within ten (10) calendar days from receipt of this notice.

Sincerely,

Linda Griffin, Sergeant
San Diego Police Department
Vice Admin Unit

cc: Alcohol Beverage Control Board

Org: 1914141113

CITY OF SAN DIEGO POLICE DEPARTMENT
VICE OPERATIONS
1401 BROADWAY, SAN DIEGO, CA 92101-5729
PHONE: (619) 531-2452 FAX: (619) 531-2449



FORM PER SECTION 23958.4 B&P

CITY OF SAN DIEGO
For Off-Sale, On-Sale Beer, and Public Premises Licenses

1. PREMISE ADDRESS: 3222 University Ave. SD
2. LICENSE TYPE: (20) Off-Sale Beer + Wine
3. TYPE OF BUSINESS: _____

CRIME REPORTING DISTRICT DD16-

NUMBER OF LICENSES ALLOWED 4 NUMBER EXISTING 5

DISTRICT AVERAGE 267.5 X 120% = 321 = HIGH CRIME

CRIMES IN THIS REPORTING DISTRICT 650/243%

If the above premises are located in an area which has an over-concentration of alcoholic beverage licenses and/or a higher than average crime rate as defined in Section 23958.4 of the Business and Professions Code:

4. WILL PUBLIC CONVENIENCE OR NECESSITY BE SERVED BY
ISSUANCE OF THIS ALCOHOLIC BEVERAGE LICENSE?
(This section to be completed by SDPD Vice Section)

☐ YES

☒ NO

LINDA CRAFFIN SGT.
Name of SDPD Vice Officer
(Please print name and title)

6195312349
Phone Number

[Signature]
Signature of SDPD Vice Officer

10.18.10
Date

Under the penalty of perjury, I declare the information in this affidavit is true to the best of my knowledge. I acknowledge that any false or misleading information will constitute grounds for denial of the application for the license or if the license is issued in reliance on information in this affidavit which is false or misleading, then such information will constitute grounds for revocation of the license issued.

APPLICANT'S SIGNATURE: Jennifer Chavez DATE: 7/20/10

(Please Print)

APPLICANT'S NAME: Jennifer Chavez

MAILING ADDRESS: 600 W. Broadway Ste 2600, San Diego CA 92101

TELEPHONE NUMBER: (619) 699-2537

ABC245 (SD)



**California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)**

and Census Tract = 16

Report as of 10/28/2010

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	168447	ACTIVE	21	2/22/1985	7/31/2011	KASHAT, HARTH G - 3392 UNIVERSITY AVE SAN DIEGO, CA 92104 Census Tract: 0016.00			3710
2)	308005	ACTIVE	20	8/9/1995	7/31/2011	SHAO, ADEL YALDA 3347 EL CAJON BLVD SAN DIEGO, CA 92104 Census Tract: 0016.00	COST MART		3710
3)	424853	ACTIVE	20	5/26/2005	4/30/2011	PANCHO VILLAS INC 3245 EL CAJON BLVD SAN DIEGO, CA 92104 Census Tract: 0016.00	BONEYS PANCHO VILLAS FARMERS MARKET		3710
4)	472728	ACTIVE	21	12/5/2008	11/30/2010	APRO LLC 3252 UNIVERSITY AVE SAN DIEGO, CA 92104-2036 Census Tract: 0016.00	APRO 41	17311 S MAIN ST GARDENA, CA 90248- 3131	3710

--- End of Report ---

For a definition of codes, view our [glossary](#).

**AGGREGATE CENSUS TRACT ANALYSIS
WALGREENS
(3222 University Avenue)**

Attached hereto is a census tract map showing census tracts 16 (Walgreens) and all adjacent census tracts: census tract 12 and 17 to the north, census tract 13 to the west, census tract 22.01 to the east and census tract 15 and 24.01 to the south, a print out from the ABC website showing the number of off sale licenses existing within each of these census tracts, and a print out showing population data for each census tract from the 2000 census. The attached information demonstrates that these census tracts have a combined population of 36,047. That population would support issuance of 28 ABC licenses without a PCN ($36,047/1,250 = 28$) and only 22 licenses actually exist within these census tracts. As such, there is no true "overconcentration" in the area surrounding Walgreens.

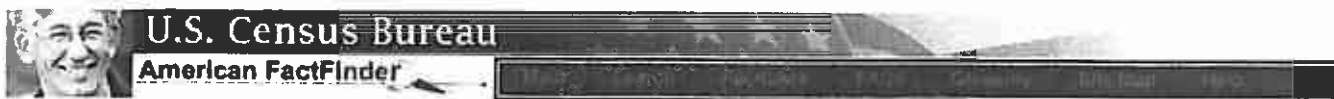
101421814.1



2010 Information	
Street Address	3222 UNIVERSITY AVE
City Name	SAN DIEGO
State Abbr	CA
Zip Code	92104
MSA/MD Code	41740
State Code	06
County Code	073
Tract Code	0016.00

Legend

- Highway
- Tract
- Street



P1. TOTAL POPULATION [1] - Universe: Total population

Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data

NOTE: For information on confidentiality protection, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf1u.htm>.

	Census Tract 12, San Diego County, California	Census Tract 13, San Diego County, California	Census Tract 15, San Diego County, California	Census Tract 16, San Diego County, California	Census Tract 17, San Diego County, California	Census Tract 22.01, San Diego County, California	Census Tract 24.01, San Diego County, California
Total	5,641	6,068	4,010	6,126	4,915	3,820	5,467

U.S. Census Bureau
Census 2000

Census count corrections for American Indian and Alaska Native Areas (AIANAs), states, counties, places, county subdivisions, census tracts, and blocks may have been released as a result of an external challenge through the Count Question Resolution Program.

Standard Error/Variance documentation for this dataset:

Accuracy of the Data: Census 2000 Summary File 1 (SF 1) 100-Percent Data (PDF 44KB)



**California Department of Alcoholic Beverage
Control**
For the County of SAN DIEGO - (Off-Sale Licenses)

and Census Tract = 12

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	215077	ACTIVE	20	7/1/1988	6/30/2011	7 ELEVEN INC 3019 MEADE AVE SAN DIEGO, CA 92116 Census Tract: 0012.00	7 ELEVEN 2121 21799	PO BOX 2245 BREA, CA 92822-2245	3710
2)	379724	ACTIVE	21	8/21/2001	2/28/2011	MAKO, JANIE G 2810 EL CAJON BLVD, STE A SAN DIEGO, CA 92104 Census Tract: 0012.00	IDAHO MARKET		3710
3)	448064	ACTIVE	20	2/21/2007	1/31/2011	ELIAS, MARYANN JARJIAS 4502 OREGON ST SAN DIEGO, CA 92116-3049 Census Tract: 0012.00	OREGON MARKET		3710
4)	459434	ACTIVE	21	11/19/2008	10/31/2011	FARISE, DEMILIE GEDALEW 2884 EL CAJON BLVD SAN DIEGO, CA 92104-1226 Census Tract: 0012.00	AWASH MARKET AND RESTAURANT		3710
5)	468857	ACTIVE	21	8/21/2008	7/31/2011	PUTRAS CORPORATION 2936 MONROE AVE SAN DIEGO, CA 92116-4226 Census Tract: 0012.00	S & N MARKET		3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



**California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)**

and Census Tract = 13

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	194575	ACTIVE	21	3/18/1987	6/30/2011	VONS COMPANIES INC THE 4145 30TH ST SAN DIEGO, CA 92104 Census Tract: 0013.00	VONS 2355	PO BOX 29096 PHOENIX, AZ 85038-9096	3710
2)	333472	ACTIVE	21	12/23/1997	11/30/2011	TALIA, MAZIN SALIM 2931 EL CAJON BLVD SAN DIEGO, CA 92104 Census Tract: 0013.00	PACIFIC LIQUOR HOUSE		3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



**California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)**

and Census Tract = 15

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	293174	ACTIVE	20	4/18/1994	3/31/2011	ZETOUNA, ENOUD GORIEL 3402 MYRTLE AVE SAN DIEGO, CA 92104 Census Tract: 0015.00	CHRIS MARKET	3045 CASMEG WY EL CAJON, CA 92019	3710
2)	386247	SUREND	20	11/20/2002	6/30/2011	BP WEST COAST PRODUCTS LLC 3205 UNIVERSITY AVE SAN DIEGO, CA 92104 Census Tract: 0015.00	ARCO AM PM 703	150 W WARRENVILLE RD, BLDG 200 NAPERVILLE, IL 60563	3710
3)	452315	ACTIVE	21	6/19/2007	5/31/2011	MURAD, ABDUL SALAM D 3206 THORN ST SAN DIEGO, CA 92104-4746 Census Tract: 0015.00	HOLIDAY MARKET & LIQUOR		3710
4)	474530	ACTIVE	21	3/17/2009	2/28/2011	VENTURE PETROLEUM COMPANY INC 3255 UNIVERSITY AVE SAN DIEGO, CA 92104-2037 Census Tract: 0015.00	VP 09752	PO BOX 21435 EL CAJON, CA 92021-0991	3710
5)	476154	ACTIVE	20	7/20/2009	6/30/2011	HAMANA, FLOUNA	NORTH PARK	2953 VIA ROBLAR CT	3710

						FAHMI 3233 MYRTLE AVE SAN DIEGO, CA 92104-4324 Census Tract: 0015.00	MARKET	EL CAJON, CA 92019-5110	
6)	479727	ACTIVE	21	9/14/2009	8/31/2011	GARFIELD BEACH CVS LLC 3151 UNIVERSITY AVE SAN DIEGO, CA 92104-2039 Census Tract: 0015.00	CVS PHARMACY 9141	1 CVS DR, MAIL DROP 23062A WOONSOCKET, RI 02895-6146	3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



**California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)**

and Census Tract = 16

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	168447	ACTIVE	21	2/22/1985	7/31/2011	KASHAT, HARTH G 3392 UNIVERSITY AVE SAN DIEGO, CA 92104 Census Tract: 0016.00			3710
2)	308005	ACTIVE	20	8/9/1995	7/31/2011	SHAO, ADEL YALDA 3347 EL CAJON BLVD SAN DIEGO, CA 92104 Census Tract: 0016.00	COST MART		3710
3)	424853	ACTIVE	20	5/26/2005	4/30/2011	PANCHO VILLAS INC 3245 EL CAJON BLVD SAN DIEGO, CA 92104 Census Tract: 0016.00	BONEYS PANCHO VILLAS FARMERS MARKET		3710
4)	472728	ACTIVE	21	12/5/2008	11/30/2011	APRO LLC 3252 UNIVERSITY AVE SAN DIEGO, CA 92104-2036 Census Tract: 0016.00	APRO 41	17311 S MAIN ST GARDENA, CA 90248- 3131	3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



**California Department of Alcoholic Beverage
Control**
For the County of SAN DIEGO - (Off-Sale Licenses)

and Census Tract = 17

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	389772	ACTIVE	21	7/26/2002	8/31/2011	EL CAJON BLVD MARKET INC 3504 EL CAJON BLVD SAN DIEGO, CA 92104 Census Tract: 0017.00	EL CAJON BLVD MARKET		3710
2)	407725	ACTIVE	20	3/24/2004	2/28/2011	HAMANA, ARKAN 3276 MONROE AVE SAN DIEGO, CA 92116-4534 Census Tract: 0017.00	Z & Z MARKET		3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)

and Census Tract = 22.01

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	279519	ACTIVE	21	3/15/1993	2/28/2011	SHAO, ADEL YALDA 3850 UNIVERSITY AVE SAN DIEGO, CA 92105-1324 Census Tract: 0022.01	QUIK CORNER DELI & GROCERY		3710

--- End of Report ---

For a definition of codes, view our [glossary](#).



**California Department of Alcoholic Beverage
Control
For the County of SAN DIEGO - (Off-Sale Licenses)**

and Census Tract = 24.01

Report as of 1/14/2011

	License Number	Status	License Type	Orig. Iss. Date	Expir Date	Primary Owner and Premises Addr.	Business Name	Mailing Address	Geo Code
1)	2498	ACTIVE	21	1/1/1978	8/31/2011	ORAM, AMIR Z 3515 UNIVERSITY AVE SAN DIEGO, CA 92104 Census Tract: 0024.01	MARKET PLACE THE		3710
2)	469738	ACTIVE	21	9/18/2008	1/31/2011	MOGZ INC 3605 UNIVERSITY AVE SAN DIEGO, CA 92104- 2316 Census Tract: 0024.01	COREYS LIQUOR		3710
3)	483260	ACTIVE	20	2/4/2010	1/31/2011	HAMANA, FLOUNA FAHMI 3805 UNIVERSITY AVE SAN DIEGO, CA 92105- 1323 Census Tract: 0024.01	38TH STREET MARKET		3710

--- End of Report ---

For a definition of codes, view our [glossary](#).

FORM PER SECTION 23958.4 B&P

CITY OF SAN DIEGO
For Off-Sale, On-Sale Beer, and Public Premises Licenses

1. PREMISE ADDRESS: 3222 University Ave. SD
2. LICENSE TYPE: (20) Off-Sale Beer + Wine
3. TYPE OF BUSINESS: _____

CRIME REPORTING DISTRICT DD16-

NUMBER OF LICENSES ALLOWED 4 NUMBER EXISTING 5

DISTRICT AVERAGE 267.5 X 120% = 321 = HIGH CRIME

CRIMES IN THIS REPORTING DISTRICT 650/2437

If the above premises are located in an area which has an over-concentration of alcoholic beverage licenses and/or a higher than average crime rate as defined in Section 23958.4 of the Business and Professions Code:

4. WILL PUBLIC CONVENIENCE OR NECESSITY BE SERVED BY
ISSUANCE OF THIS ALCOHOLIC BEVERAGE LICENSE?

(This section to be completed by SDPD Vice Section)

☐ YES

☒ NO

LINDA CRIFFIN, SGT.

Name of SDPD Vice Officer

(Please print name and title)

[Signature]

Signature of SDPD Vice Officer

6195312349

Phone Number

10.18.10

Date

Under the penalty of perjury, I declare the information in this affidavit is true to the best of my knowledge. I acknowledge that any false or misleading information will constitute grounds for denial of the application for the license or if the license is issued in reliance on information in this affidavit which is false or misleading, then such information will constitute grounds for revocation of the license issued.

APPLICANT'S SIGNATURE: Jennifer Chavez DATE: 7/20/10

(Please Print)

APPLICANT'S NAME: Jennifer Chavez

MAILING ADDRESS:

600 W. Broadway Ste 2600, San Diego CA 92101

TELEPHONE NUMBER:

(619) 699-2537